IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

Crl.MC.No. 4044 of 2006()

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CRA.52/2006 of SESSIONS COURT, THODUPUZHA
CC.307/2001 of JUDL. MAGI. OF FIRST CLASS-I (FOREST OFFENCES), THODUPUZHA
(MC 65/2004)

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PETITIONER: APPELLANT/COUNTER PETITIONER

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KUTTAPPAN, S/O. RAMAN,
VEMPAMKOTTU VEETTIL, OLAMATTUKARA,
THODUPUZHA VILLAGE.

BY ADV. SRI.T.M.RAMAN KARTHA
SMT.MANJULA NAIR

RESPONDENTS:

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STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J.**

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**Crl.M.C.NO.4044 OF 2006**

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Dated this the 20th day of December, 2006.

**ORDER**

The petitioner is one of the sureties of an accused in a prosecution under Section 138 of the N.I Act. The accused is absconding. The learned Magistrate initiated proceedings under Section 446 Cr.P.C. The petitioner received notice and appeared before the learned Magistrate. He could not produce the accused. The learned Magistrate imposed a penalty of Rs.4,000/-. An appeal was taken before the learned Sessions Judge under Section 449 Cr.P.C. In the said appeal, leniency was shown and the amount of penalty was reduced to Rs.3,000/-. The petitioner has come to this Court again complaining that the penalty imposed is excessive.

2. On merits, the petitioner does not appear to have any case at all. The order of the learned Magistrate shows that the petitioner had received notice and had appeared before the learned Magistrate and had sought time to produce the accused. In these circumstances, the grievance that there was no proper notice to the petitioner cannot be accepted. No attempt is made to substantiate that contention also.

3. The learned appellate Judge had shown indulgence and leniency to a fault and to the extent possible. The accused is absconding even now as is evident from the appellate judgment passed by the learned Sessions Judge. There is no submission before me that the accused has actually appeared before the learned Magistrate at least now.

4. The interests of public justice demand that the bounden and the sureties must scrupulously abide by the undertakings made by them before Court. Misplaced sympathy and leniency will be counter productive and will further constitute to the scandalous delay in the judicial process. That the petitioner is ill, does not in any way, persuade me to show any further leniency. It is significant that there is no assertion even now that the presence of the accused has been made available to the learned Magistrate. Maximum leniency has already been shown. The bond was for an amount of Rs.10,000/-. The penalty imposed is only Rs.3,000/-. The accused is still at large. In these circumstances, I am satisfied, that this petition deserves to be dismissed.

5. It is, of course, brought to my notice that Crl.R.P.No.245 of 2004 is pending before this Court and that is

the revision petition filed by the accused in this case challenging his conviction. Obviously even after preferring the revision petition, the accused is absconding, as is evident from the statements relevant from the appellate judgment.

**R.BASANT**
**JUDGE**

rtr/